

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 99-0316 RO  
Responsible Officer Liability—Duty to Remit Withholding Taxes  
For The Period: January 1998 through June 1998**

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**ISSUE**

I. **Responsible Officer Liability**: Duty to Remit Withholding Tax

**Authority**: IC 6-3-4-8; Indiana Department of Revenue v. Safayan, 654 N.E.2d 270, 273 (Ind. 1995)

Taxpayer protests the Department's determination of responsible officer liability for withholding taxes not paid during the assessment period.

**STATEMENT OF FACTS**

Taxpayer owned and operated a nursing home.

Additional facts will be provided as necessary.

I. **Responsible Officer Liability**: Duty to Remit Withholding Tax

**DISCUSSION**

The Department believed taxpayer to be a responsible officer for the nursing home during the above tax period. On this basis, the Department assessed unpaid withholding tax liabilities. Taxpayer protests the Department's assessment of withholding tax liability.

IC 6-3-4-8(f) states in part:

All money deducted and withheld by an employer shall immediately upon such deduction be the money of the state, and every employer who deducts and retains any amount of money under the provisions of IC 6-3 shall hold the same in trust for the state of Indiana. . . .

In order to determine which persons are personally liable for the payment of these “trust” taxes, the Department must initially determine which parties had a duty to remit the taxes to the Department. Indiana Department of Revenue v. Safayan, 654 N.E.2d 270, 273 (Ind. 1995), is instructive:

The method of determining whether a given individual is a responsible person is the same under the gross retail tax and the withholding tax . . . . An individual is personally liable for unpaid sales and withholding taxes if she is an officer, employee, or member of the employer who has a duty to remit the taxes to the Department . . . . The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid.

The Indiana Supreme Court in Safayan identified three relevant factors:

- (1) the person’s position within the power structure of the corporation;
- (2) the authority of the officer or employee as established by the articles of incorporation, bylaws, or the person’s employment contract; and
- (3) whether the person actually exercised control over the finances of the business.

There is no question that taxpayer was a responsible officer while he owned and operated the nursing home. However, taxpayer relinquished all control over the nursing home on March 19, 1997. A Court Order for Relief From Judgment indicates in its findings of fact that taxpayer sold the nursing home at a Sheriff’s sale on March 19, 1997. After this point, taxpayer had no further contact with the nursing home, nor was he act in any capacity that would make him liable for taxes owed after March 19, 1997. Taxpayer was not a responsible officer after March 19, 1997. Thus, taxpayer was not a responsible officer during the above tax period, January 1998 through June 1998. Therefore, taxpayer had no duty to remit withholding tax to the Department for the above tax period.

### **FINDING**

The taxpayer’s protest is sustained.